

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Verizon Advanced Data Inc. (U 6454 C) to Transfer Intrastate Advanced Data Services Assets and California Customer Base, Withdraw Service and Cancel its CPCN.

Application 01-11-014
(Filed November 13, 2001)

Application of Verizon California Inc. (U 1002-C) for Approval to Transfer Intrastate Advanced Data Service Assets to Verizon Advanced Data Inc.

Application 00-09-028
(Filed September 1, 2000)

**DECISION AWARDING INTERVENOR COMPENSATION
TO THE UTILITY REFORM NETWORK (TURN)**

This decision awards The Utility Reform Network (TURN) \$13,585.44 for its contribution to Decision (D.) 03-06-044, the full amount of TURN's request.

1. Background

In D.03-06-044, we granted Application (A.) 01-11-014 of Verizon Advanced Data Inc. (VADI) to transfer its advanced data services assets and reintegrate with Verizon California Inc. (Verizon). We also granted Verizon's motion to withdraw its earlier filed application to transfer intrastate advanced data service assets to VADI (A.00-09-028) on the ground that subsequent events had superseded the need to act on the application given Verizon's decision not to maintain advanced services in the separate VADI affiliate. We consolidated both applications, and bifurcated A.01-11-014 into two phases, Phase 1 and Phase 2.

In Phase 1, we granted the application to transfer VADI assets back to Verizon, but reserved Phase 2 for consideration of the competitive issues raised in a protest to the application.

TURN protested A.01-11-014 on the ground it was incomplete and did not allow for a complete evaluation of the financial impact of the reintegration of advance services assets into Verizon.¹ TURN also asked the Commission to impose operational and structural safeguards to avoid anti-competitive impacts from the reintegration.

Both the request for supplementation of the application and the request for consideration of competitive impacts were fruitful. The assigned Administrative Law Judge (ALJ) directed Verizon to supplement its application with the information requested in the protest. The Commission in its decision acknowledged the need to address the competitive issues, but deferred such consideration to a second phase for reasons unrelated to TURN's protest.

No party opposes TURN's request for compensation.

2. Requirements for Awards of Compensation

Intervenors who seek compensation for their contributions in Commission proceedings must file requests for compensation pursuant to Pub. Util. Code §§ 1801-12. (Unless otherwise noted, all statutory citations are to the Public Utilities Code.)

A. Timeliness of Notice of Intent

Section 1804(a) requires an intervenor (also termed "customer" in the statute) to file a notice of intent (NOI) to claim compensation within 30 days after

¹ TURN was joined in its protest by Covad Communications Company (Covad) and WorldCom, Inc. (WorldCom).

the prehearing conference (PHC) or by a date established by the Commission. The NOI must present information regarding the nature and extent of the customer's planned participation and an itemized estimate of the compensation the customer expects to request. The NOI may request a finding of eligibility for compensation.

Here, the ALJ did not hold a PHC,² so TURN did not file a NOI until it filed its request for compensation. Under the circumstances, we find the NOI to be timely. Section 1804(a) provides that "[i]n cases where no prehearing conference is scheduled . . . the commission may determine the procedure to be used in filing these requests." We find in this case that it is appropriate to consider TURN's request here, especially given the fact that the request is unopposed, the amount of compensation sought is low, and there was no other logical point in the proceeding for TURN to file an NOI.

B. Customer Status

Pursuant to Decision (D.) 98-04-059, this decision must determine whether the intervenor is a customer, as defined in § 1802(b), and whether the intervenor is 1) a participant representing consumers, 2) a representative authorized by a customer, or 3) a representative of a group or organization that is authorized by its bylaws or articles of incorporation to represent the interests of residential ratepayers.³

² As outlined in TURN's request, the ALJ asked the parties whether a prehearing conference would be necessary and the parties agreed that it would not be. *See Request of The Utility Reform Network for Award of Compensation* (TURN Request) at 4-5.

³ "When filing its Notice of Intent, a participant should state how it meets the definition of customer: as a *participant* representing consumers, as a *representative* authorized by a customer, or as a representative of a *group or organization* that is authorized by its

Footnote continued on next page

TURN meets the third definition of customer, as set forth in § 1802(b): it is a group or organization that is authorized by its bylaws or articles of incorporation to represent the interests of residential ratepayers.⁴ TURN is organized to represent and advocate the interests of consumers of public utility services in California. TURN qualifies as a customer because it is an organization authorized by its articles of incorporation to represent the interests of consumers, a portion of which are residential customers.

C. Significant Financial Hardship

Only those customers for whom participation or intervention would impose a significant financial hardship may receive intervenor compensation. Section 1804(a)(2)(B) allows the customer to include a showing of significant financial hardship in the NOI. Section 1802(g) defines “significant financial hardship”:

“Significant financial hardship” means either that the customer cannot without undue hardship afford to pay the costs of effective participation, including advocate’s fees, expert witness fees, and other reasonable costs of participation, or that, in the case of a group or organization, the economic interest of the individual members of the group or organization is small in comparison to the costs of effective participation in the proceeding. Alternatively, the customer may make the

bylaws or articles of incorporation to represent the interests of residential customers.” D.98-04-059, *mimeo.*, at 28-29 (emphasis in original).

⁴ D.98-04-059 directed intervenors either to file their articles of incorporation/bylaws with the NOI, or to provide a reference to a previous filing. D. 98-04-059, *mimeo.*, at 30. TURN chose the latter alternative, referring to articles of incorporation it filed with its NOI in A.98-02-017 and A.99-12-024. TURN has approximately 30,000 dues paying members, the majority of whom it believes to be residential ratepayers.

required showing in the request for an award of compensation.

A rebuttable presumption of eligibility exists for TURN. On December 29, 2000, Administrative Law Judge (ALJ) Robert Barnett issued a written ruling in A.00-09-002 finding that TURN had made a showing of significant financial hardship, had met the requirements of Section 1804(a), and was eligible for compensation in that proceeding. Because A.01-11-014 commenced on November 13, 2001, within one year of ALJ Barnett's ruling, a rebuttable presumption exists that TURN is eligible for compensation in A.01-11-014.⁵

The same reasoning applies to A.00-09-028: ALJ Barnett issued a ruling on January 7, 2000 in A.99-10-023 finding TURN eligible for compensation, and A.00-09-028 commenced on September 1, 2000, less than one year thereafter.

No party has attempted to rebut that presumption.

D. Nature and Extent of Planned Participation

Section 1804(a)(2)(A)(i) requires NOIs to include a statement of the nature and extent of the customer's planned participation in the proceeding to the extent this can be predicted.

In this case, we need not enforce this requirement, since the extent of participation is already known. We discuss the participation in full in the section below related to TURN's substantial contribution, and find that TURN's work meets the requirements for an award of intervenor compensation.

⁵ § 1804 (b)(1).

E. Itemized Estimate of Compensation

Section 1804(a)(2)(A)(ii) requires that NOIs include an itemized estimate of the compensation the customer expects to receive.

We need not enforce this requirement here, because we have TURN's actual request amount, properly itemized, before us. As we discuss in the section on the reasonableness of TURN's requested compensation, its requested amount is reasonable and therefore compensable.

F. Timeliness of Compensation Request

Section 1804(c) requires an eligible customer to file a request for an award within 60 days of issuance of a final order or decision by the Commission in the proceeding. The Commission issued D.03-06-044 on June 23, 2003. TURN timely filed its request for an award of compensation on August 13, 2003.

3. Substantial Contribution to Resolution of Issues

Under § 1804(c), an intervenor requesting compensation must provide "a detailed description of services and expenditures and a description of the customer's substantial contribution to the hearing or proceeding."

Section 1802(h) states that "substantial contribution" means that,

in the judgment of the commission, the customer's presentation has substantially assisted the commission in the making of its order or decision because the order or decision has adopted in whole or in part one or more factual contentions, legal contentions, or specific policy or procedural recommendations presented by the customer. Where the customer's participation has resulted in a substantial contribution, even if the decision adopts that customer's contention or recommendations only in part, the commission may award the customer compensation for all reasonable advocate's fees, reasonable expert fees, and other reasonable costs incurred by the customer in preparing or presenting that contention or recommendation.

Section 1804(e) requires the Commission to issue a decision that determines whether the customer has made a substantial contribution and what amount of compensation to award. The level of compensation must take into account the market rate paid to people with comparable training and experience who offer similar services, consistent with § 1806.

As provided in § 1802(h), a party may make a substantial contribution to a decision in one of several ways. It may offer a factual or legal contention upon which the Commission relied in making a decision, or it may advance a specific policy or procedural recommendation that the ALJ or Commission adopted. A substantial contribution includes evidence or argument that supports part of the decision even if the Commission does not adopt a party's position in total.⁶

TURN alleges it made a substantial contribution because its request for supplementation of the application was granted, and the Commission recognized in D.03-06-044 the need to consider the competitive impact of the reintegration, albeit in a later phase of the proceeding. TURN notes that it followed the case closely, filed documents at every opportunity, and communicated several times with the ALJ and Verizon's outside counsel on the case.

D.03-06-044 recognizes TURN's concerns regarding competitive impacts and orders Verizon to address them in a compliance filing: "We agree with

⁶ The Commission has provided compensation even when the position advanced by the intervenor is rejected. *See* D.89-03-063 (awarding San Luis Obispo Mothers For Peace and Rochelle Becker compensation in Diablo Canyon Rate Case because their arguments, while ultimately unsuccessful, forced the utility to thoroughly document the safety issues involved).

TURN in this regard and impose additional compliance obligations.”⁷ At TURN’s urging, the final decision also adjusted language regarding the Commission’s jurisdiction over retail Digital Subscriber Line (DSL) services, and regarding the procedure for the next phase of this proceeding.

We agree based on the foregoing summary that TURN made a substantial contribution to D.03-06-044. We address the reasonableness of the compensation amount TURN requests in the next section.

4. The Reasonableness of Requested Compensation

TURN requests \$13,585.44, as follows:

Advocate’s Fees

R. Costa	5.00 Hours	X	\$180 (2001)	=	\$900.00
R. Costa	8.75 Hours	X	\$200 (2002)	=	\$1,750.00
C. Mailloux	8.50 Hours	X	\$250 (2001)	=	\$2,125.00
C. Mailloux	25.25 Hours	X	\$275 (2002-2003)	=	\$6,943.75
C. Mailloux	12.50 Hours	X	\$135 (Comp)	=	\$1,718.75
			SUBTOTAL	=	\$13,437.50

Other Reasonable Costs

Copies	=	\$113.00
Postage	=	\$10.94
Phone	=	\$24.00
	SUBTOTAL	= \$147.94
	TOTAL Requested	= \$13,585.44

⁷ D.03-06-044, *mimeo.*, at 9.

A. Overall Benefits of Participation

In D.98-04-059, the Commission adopted a requirement that a customer must demonstrate that its participation was “productive,” as that term is used in § 1801.3, where the Legislature gave the Commission guidance on program administration. In that decision, we discuss the requirement that participation must be productive in the sense that the costs of participation should bear a reasonable relationship to the benefits realized through such participation. Customers are directed to demonstrate productivity by assigning a reasonable dollar value to the benefits of their participation to ratepayers. This exercise assists us in determining the reasonableness of the request and in avoiding unproductive participation.

TURN notes that it would be extremely difficult to assign a dollar value to this proceeding or its contribution, but notes that the assets at issue were initially valued at \$31.8 million and that the Verizon-VADI license agreement was valued at \$19 million per year. As TURN notes, while the reintegration may not have had a quantifiable impact on local service or advanced services rates, if done improperly or with the result of hiding, over-valuing, or under-valuing assets, the long-term impact would have been detrimental to customers. On this basis, we find that TURN’s work was productive.

B. Hours Claimed

TURN documents its claimed hours by presenting a daily breakdown of the hours of its staff advocate and attorney, accompanied by a brief description of each activity. The hourly breakdown reasonably supports the

claim for total hours.⁸ Since we find that TURN's contribution on all issues was substantial,⁹ we need not exclude from TURN's award compensation for certain issues. However, we note that TURN broke down its efforts by issue; had we needed to eliminate certain issues from the award, this breakdown would have facilitated the process.

C. Hourly Rates

1. Staff Advocate Costa

TURN seeks \$2,650.00 for Regina Costa's time. Costa is TURN's Research Director, and participated in early phases of the proceeding. Costa has an approved hourly rate for work performed in 2001 of \$180.¹⁰ She seeks this rate for 5 hours of work she performed in 2001, and we find this reasonable.

TURN seeks a \$200 hourly rate for Costa for the 8.75 hours she allocated to this proceeding in 2002. We approved this rate for 2002 in D.03-05-027, and D.03-06-010 and we apply it here as well.

2. Attorney Mailloux

TURN seeks \$10,787.50 for Attorney Christine Mailloux's time. It requests hourly rates for Mailloux that are consistent with those the Commission

⁸ As the Commission requires, TURN seeks compensation at half the usual hourly rate for hours devoted to the preparation of this compensation request. TURN Request at 23 n.14 & Attachment A.

⁹ As noted, at TURN's urging, the Commission or ALJ ordered Verizon to supplement its application, ordered Verizon to address TURN's additional concerns in a compliance filing, adjusted language in the decision regarding jurisdiction over DSL services, created a second phase to review competitive issues, and made the second phase more user friendly than what was in the draft decision.

¹⁰ D.03-05-027.

has already found reasonable for each period in question.¹¹ We will adopt these rates for this compensation award, as follows: \$250 per hour for 2001 and \$275 per hour for 2002 and 2003.

D. Costs

TURN requests \$147.94 for administrative costs associated with its work in this proceeding. The expenses include copying, postage and faxes, and are reasonable.

¹¹ D.03-05-027 (\$250 per hour for Mailloux in 2001); D.03-06-010 (\$275 for 2002). Due to the relatively small number of hours in 2003, TURN seeks compensation for the 2003 hours using the approved 2002 rate. We do not construe this concession as a waiver of TURN's right to seek a higher 2003 rate for Mailloux in future requests.

5. Award

We award TURN \$13,585.44, the full amount of its request, as follows and as shown in Appendix A to this decision.

Advocate's Fees

R. Costa	5.00 Hours	X	\$180 (2001)	=	\$900.00
R. Costa	8.75 Hours	X	\$200 (2002)	=	\$1,750.00
C. Mailloux	8.50 Hours	X	\$250 (2001)	=	\$2,125.00
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Phone	=	\$24.00
	SUBTOTAL	= \$147.94
	TOTAL Requested	= \$13,585.44

Consistent with previous Commission decisions, we will order that interest be paid on the award amount (calculated at the three-month commercial paper rate), commencing the 75th day after TURN filed its compensation request and continuing until full payment of the award is made. We allocate responsibility to pay the award to Verizon and VADI jointly.

As in all intervenor compensation decisions, we put TURN on notice that the Commission staff may audit TURN's records related to this award. Thus, TURN must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. TURN's records should identify specific issues for which it requests compensation, the actual time spent by each employee, the applicable hourly rate, fees paid to consultants, and any other costs for which compensation may be claimed.

6. Waiver of Comment Period

Pursuant to Rule 77.7(f)(6) of the Commission's Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment may be waived because this is an intervenor compensation decision.

7. Assignment of Proceeding

Carl Wood is the Assigned Commissioner and Sarah R. Thomas is the assigned ALJ in this proceeding.

Findings of Fact

1. TURN has made a timely request for compensation for its contribution to D.03-06-044.
2. TURN has shown significant financial hardship based on a rebuttable presumption drawn from earlier ALJ rulings.
3. TURN has requested hourly rates for advocate Costa that are consistent with rates we have approved in prior Commission decisions.
4. TURN has requested hourly rates for attorney Mailloux that are consistent with rates we have approved in prior Commission decisions.
5. The costs incurred by TURN are reasonable.

Conclusions of Law

1. TURN has fulfilled the requirements of §§ 1801-12, which govern awards of intervenor compensation.
2. TURN should recover compensation for its advocate and attorney fees.
3. TURN should recover compensation for its costs.
4. TURN should be awarded \$13,585.44 for its contribution to D.03-06-044.
5. This order should be effective today so that TURN may be compensated without unnecessary delay.

O R D E R

IT IS ORDERED that:

1. The Utility Reform Network (TURN) is awarded \$13,585.44 in compensation for its substantial contribution to Decision 03-06-044.
2. Verizon California Inc. (Verizon), Verizon Advanced Data Inc. (VADI), or either of them shall pay TURN the award within 30 days of the effective date of this order. Verizon, VADI, or either of them shall also pay interest on the award at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release H.15, with interest, beginning October 27, 2003, the 75th day after TURN filed its compensation request, and continuing until full payment of the award is made.

This order is effective today.

Dated _____, at San Francisco, California.

Compensation Decision Summary Information

Compensation Decision(s):	
Contribution Decision(s):	D0306044
Proceeding(s):	A0111014, A0009028
Author:	Thomas
Payer(s):	Verizon California Inc., Verizon Advanced Data Inc.

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Reason Change/Disallowance
The Utility Reform Network (TURN)	August 13, 2003	\$13,585.44	\$13,585.44	N/A

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Regina	Costa	Advocate	TURN	\$180	2001	\$180
Regina	Costa	Advocate	TURN	\$200	2002	\$200
Christine	Mailloux	Attorney	TURN	\$250	2001	\$250
Christine	Mailloux	Attorney	TURN	\$275	2002	\$275
Christine	Mailloux	Attorney	TURN	\$275	2003	\$275 ¹²

¹² Used 2002 rate at TURN's request, without prejudice to its right to seek higher 2003 rate for Ms. Mailloux at later date.